

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

X _____ X

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDREW AUERNHEIMER,

Defendant.

X _____ X

11-CR-470 (SDW)

**NOTICE OF MOTION FOR A
JUDGMENT OF ACQUITTAL
UNDER FEDERAL RULE OF
CRIMINAL PROCEDURE 29**

Defendant Andrew Auernheimer, through his attorneys, moves for a judgment of acquittal under Federal Rule of Criminal Procedure 29 as discussed in the attached Memorandum of Law in support of Defendant's motion.

Respectfully submitted,

By:



Tor Ekeland

Dated: December 3, 2012

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Pro Bono Attorneys for Defendant Andrew Auernheimer

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To:
Michael Martinez, Executive Assistant United States Attorney
Zach Intrater, Assistant United States Attorney
District of New Jersey
970 Broad Street, Suite 700
Newark, NJ 07102

UNITED STATES DISTRICT COURT
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**CERTIFICATE OF SERVICE OF
DEFENDANT'S MOTION FOR A
JUDGMENT OF ACQUITTAL
UNDER FEDERAL RULE OF
CRIMINAL PROCEDURE 29**

I, Tor Ekeland, hereby affirm under the penalty of perjury that on December 3, 2012, I caused the attached Notice of Motion of Defendant's Motion for a Judgment of Acquittal Under Federal Rule of Criminal Procedure 29, along with its accompanying Memorandum of Law, to be served via the Federal District Court of New Jersey's ECF system upon the following attorneys for the government:

Michael Martinez, Executive Assistant United States Attorney
Zach Intrater, Assistant United States Attorney
District of New Jersey
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Newark, NJ 07102



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DATED: December 3, 2012

UNITED STATES DISTRICT COURT
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11-CR-470 (SDW)

UNITED STATES OF AMERICA,

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X _____ X

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR A
JUDGMENT OF ACQUITTAL UNDER FEDERAL RULE OF CRIMINAL
PROCEDURE 29**

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THE TRIAL

On November 20, 2012, a jury sitting in the Federal Court for the District of New Jersey returned guilty verdicts against Defendant Andrew Auernheimer as to both counts of the Superseding Indictment (the “Indictment”) dated August 16, 2012. Count One charged the Defendant with conspiracy to commit unauthorized access to a protected computer, in violation of 18 U.S.C. § 371 and 18 U.S.C. § 1030(a)(2)(C), and Count Two charged the Defendant with Identity Theft in violation of 18 U.S.C. § 1028(7). The Defendant now moves this Court under Federal Rule of Criminal Procedure 29(c) to enter a judgment of acquittal based on the insufficiency of the evidence

STANDARD OF REVIEW

The only ground for granting a judgment of acquittal under Federal Rule of Criminal Procedure 29(c) (the “Rule”) is if there is substantial evidence, when viewed in its totality and in the light most favorable to the government, for a rational trier of fact to conclude that a defendant is guilty beyond a reasonable doubt. *See, e.g. United States v. Starnes*, 583 F.3d 196, 206 (2009); Fed. R. Crim. P. 29. Federal law permits general, non-specific motions under the Rule. *See* Charles Alan Wright & Peter J. Henning, Federal Practice & Procedure § 466 (2012) (“Specificity is not required by Rule 29 . . . [i]n this respect the Criminal Rules differ from the Civil Rules” (collecting cases)).

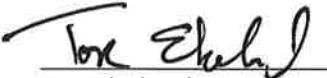
ARGUMENT

The evidence presented at trial was insufficient to support a guilty verdict by a rational fact finder as to both Count One and Two of the Indictment. As to Count One, the evidence was insufficient as to (1) proof of a conspiracy to violate the Computer Fraud and Abuse Act (18 U.S.C. §1030(a)(2)(c)) and, (2) proof that the conspiracy in Count One was in furtherance of a violation of New Jersey State law, namely N.J.S.A. 2C:20-31(a). As to Count Two, the evidence at trial was insufficient to support a guilty verdict by a rational fact finder as to a violation of 18 U.S.C. 1028(a)(7) because reasonable doubt exists as to (1) the knowing transfer, possession, and use without lawful authority, of (2) a means of identification (3) in connection with the unlawful accessing of AT&T's servers referenced in Count One.

CONCLUSION

The Court should enter in a judgment of acquittal for Defendant Andrew Auernheimer as to Counts One and Two of the Indictment as the evidence presented at trial was insufficient to sustain the guilty verdicts on both Counts.

Respectfully submitted,

By: 
Tor Ekeland
Dated: December 3, 2012

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X _____ X

11 - CR - 470 (SDW)

**PROPOSED ORDER
[GRANTING/DENYING]
DEFENDANT'S MOTION
FOR A JUDGMENT OF
ACQUITTAL UNDER
FEDERAL RULE OF
CRIMINAL PROCEDURE
29**

IT IS HEREBY ORDERED: That the Defendant's Motion for a
Judgment of Acquittal under Federal Rule of Criminal Procedure 29 is hereby
[granted/denied]

Hon. Susan D. Wigenton
United States District Judge
Federal District Court for the District of New Jersey

Newark, New Jersey, _____, 2012